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therefore reference to the statute is not necessary;¹⁴ and as already shown, they will be judicially noticed because they are established by law.¹⁵

Thus we find that municipal courts will judicially notice municipal ordinances, but the superior courts will not. The California system of pleading and proof is, however, a semi-recognition of judicial notice even in the Superior Courts. Why not make it a full recognition, as has been done in some states by statute?¹⁶ A municipal ordinance is well established and authoritatively settled; it is not doubtful or uncertain. Is it not safe to assume its existence without proof and its knowledge within the limits of the jurisdiction of the court? Judicial notice will be taken of a custom or usage which has become general to a sufficient extent;¹⁷ why not of a municipal ordinance? Would it not be "a saving of time, labor and expense in securing and introducing evidence on matters which are not actually bona fide disputed; the tenor of which can safely be assumed from the tribunal's general knowledge or from slight research on its part?"¹⁸

M. H. V. G.

INTEREST ON UNLIQUIDATED DEMANDS.—When a demand is liquidated the law implies a promise to pay interest at the legal rate¹ from the date it fell due. The theory is either that the law implies a promise to pay interest as damage for the unlawful detention and use of the money² or for the breach of the contract.³ Where the demand is unliquidated, interest runs from the date of judgment, i. e., of entering judgment.⁴ The reason is that the debtor is not in default because he does not know how much is due.⁵ The latter rule has been so modified by definitions and exceptions that it is of little use.

Liquidated generally means defined, settled, ascertained. In regard to interest, the exception to the rule of unliquidated demands which allows interest on a demand which can be ascer-

¹⁴ *Watson v. Whitney* (1863), 23 Cal. 375; Cal. Code Civ. Proc., §§ 933, 929.

¹⁵ Cal. Code Civ. Proc., § 1875 (2).

¹⁶ *Supra*, n. 7.

¹⁷ *Bernard v. Benson* (1910) 58 Wash. 191, 108 Pac. 439; 124 Am. St. Rep. 20, 54, n.; *Schultz v. Ford Bros.* (1906) 133 Iowa 402, 109 N. W. 614.

¹⁸ Wigmore, "Pocket Code of Evidence", p. 475.

¹ Cal. Civ. Code, § 1917.

² Cal. Civ. Code, § 1915; *Dodge v. Perkins* (1830), 9 Pick. (Mass.) 368.

³ *Sedgwick on Damages* (2d ed.) p. 136.

⁴ *Cutting Co. v. Canty* (1904), 141 Cal. 692, 697.

⁵ *Meyer v. Buckley* (1913), 22 Cal. App. 96, 133 Pac. 510; *Brady v. Wilcoxson* (1872) 44 Cal. 239.

tained by mere computation or reference to settled market prices⁶ has become so well established that the definition of liquidated demands has been extended to include such demands.⁷ "Liquidated" is so used in *Howard v. Hobson*.⁸

Two exceptions might be taken to calling the demand liquidated in this case. Although the point has not been raised in regard to a demand for interest, it is settled in the law of accord and satisfaction that where one of two sums is admitted to be due and there is a bona fide dispute as to which is due, the demand is not liquidated and the question of bona fides is one to be determined by the trial court.⁹ In the principal case, there was a dispute as to whether the division should be made of the gross or net profits, and the contract was ambiguous. The point was not decided on the question of liquidation, but as an immaterial difference between the facts alleged and proved under section 469 of the Code of Civil Procedure.

The definition of "unliquidated" is further extended in cases holding that where the right to recover is bona fide disputed, although the amount, should there be a recovery, is settled, the demand is not liquidated in relation to the defendant.¹⁰ The rule is applied that interest is not given, though the demand is not defined as unliquidated, in *Griggs v. Granford*.¹¹ This definition seems inflated to the breaking point, and the rule is dangerous, for in almost all cases of contract litigation the liability under the contract is denied. In *Howard v. Hobson* it is denied on the ground that the purchase was not under the option, and that the contract was within the Statute of Frauds. The rule in California is that once the plaintiff has shown facts entitling him to recover a sum of money from the defendant which the defendant refuses to pay, he has shown damage and is entitled to interest.¹²

Not only must the demand be liquidated to entitle the plaintiff to interest under the general rule, but the date the principal falls due must be settled by the terms of the contract or by implication.¹³ Unless the date is set there can be no default in the debtor.

After this there is an exception made to the rule of no inter-

⁶ Cal. Civ. Code, § 3287; *Cox v. McLaughlin* (1888), 76 Cal. 60, 67; *Courteney v. Standard Box Co.* (1911), 16 Cal. App. 600.

⁷ *Sutherland on Damages*, § 347.

⁸ 27 Cal. App. Dec. 509.

⁹ *B. & W. Engineering Co. v. Beam* (1913), 23 Cal. App. 164, 137 Pac. 624.

¹⁰ *Baker County v. Huntington* (1907), 48 Ore. 593, 89 Pac. 144; *Seaside v. Ore. Surety Co.* (March, 1918), 171 Pac. 396, 399; *Siverson v. Clanton* (April, 1918) Ore., 171 Pac. 1051.

¹¹ (1892), 50 Ill. App. 172.

¹² *Bartlett v. O. F. Savings Bank* (1889), 79 Cal. 218, 223.

¹³ *Jones v. Gardner* (1881), 57 Cal. 641, *Knowles v. Baldwin* (1899), 125 Cal. 224, 227.

est on an unliquidated debt. If the date is settled, and the liability to pay something is undisputed, the only question being the amount due, interest has been allowed from the date the principal fell due.¹⁴ In New York this is the settled rule; in Florida the distinction between liquidated and non-liquidated debts is practically obliterated, and this rule is followed in Missouri, Texas, Wyoming, Illinois, Wisconsin, Georgia, Connecticut and Minnesota.¹⁵ The word liquidated could not possibly be extended to cover this situation, so some other ground must be found. The holding is probably based on the rule that interest may be had on demands not liquidated or capable of being liquidated except by agreement of the parties or adjudication where the debtor is in default because of vexatious delay in not taking the steps necessary to ascertainment.¹⁶

Instead of clinging to an outworn rule and torturing the definition of the word liquidated beyond recognition, it would be better to look into the basis of all of the awards of interest. From the decisions it is clearly shown that interest is allowed from the time the creditor was entitled to the principal when, and only when, the debtor can be shown to be in default in not paying the money.

H. V. D.

SALES OF PERSONAL PROPERTY: THE DOCTRINE OF POTENTIAL EXISTENCE.—In the case of *State Bank of Ramona v. Clelland*¹ the court said by way of dictum, "that personal property having a potential existence may be mortgaged." Among the property described in the mortgage was the following: "All my bees, bee material, implements, hives and produce of bees." Why was it necessary in order for this mortgage to be valid to resort to the archaic doctrine of potential existence?

The doctrine of potential existence is a common law fiction. There is no doubt of the possibility both at common law and under our law today of contracting to sell goods which the seller does not own at the time.² But it is obvious in the nature of the case that it is impossible for a seller to transfer presently title to goods to which he has no ownership at the time of the sale. As he has no title he can give none.³ The common law

¹⁴ *Mix v. Miller* (1881), 57 Cal. 356.

¹⁵ *Sutherland on Damages*, §347.

¹⁶ *McCowen v. Pew* (1912), 18 Cal. App. 482, 123 Pac. 354; *Estate of Sanderson* (1887), 74 Cal. 199, 215, 15 Pac. 753; *McMahon v. N. Y. & Erie R. R.* (1859), 20 N. Y. 463, 468; *Scroggs v. Cunningham* (1876), 81 Ill. 110.

¹ (Sept. 3, 1918), 27 Cal. App. Dec. 296.

² *Williston on Sales*, §128, n. 3.

³ *Emerson v. European R. R. Co.* (1877), 67 Me. 357, 24 Am. Rep. 39; *Skipper v. Stokes* (1868), 42 Ala. 25, 57, 94 Am. Dec. 646.